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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 5586

PAUL J. BELL, JR.,

Petitioner,

v.

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

On Sunday afternoon, November 24, 1968, Georgia licensee Paul J. Bell, Jr., was driving his station wagon in Sparks, Georgia, when he collided with a bicycle being ridden by five-year-old Sherry Capes. Bell was uninsured (A. 4-5). An accident report was filed with the Georgia Department of Public Safety (Department) on behalf of the child's parents, and it was indicated that

the child had been substantially injured and that Bell had made no effort to settle the matter (A. 3-5). As required by the Department, the attending physician's report and the affidavit of the father swearing that he believed he was entitled to recover the amount of damages stated were subsequently filed (A. 6-7). These documents were prerequisites to the Department's demand for security, to substantiate the claim and evidence its credibility. Their contents indicate their purpose (A. 6-7 [Forms SR-57 and SR-57A]).

Thereafter, Bell was advised by the Department that he was required to file an accident report, and notice of insurance if insured, and that other documents were required if damage claims were involved (A. 8). At the same time, he was notified of the claim filed by the child's parents and ordered to deposit security or submit a general or conditional release, file proof of financial responsibility for a period of one year in the future, and pay a ten-dollar restoration fee (A. 9). He was advised that if he did not comply with one of the alternatives, his license, registration certificates, and plates would be suspended thirty days hence, i.e., on May 10. (This was later extended to June 10.) However, proof of liability insurance in effect at the time of the accident would avoid suspension and the other requirements altogether (A. 9).

Bell's attorney asked the Department for a hearing, claiming the accident was unavoidable (A. 10). The hearing was set for May 7 and Bell and his attorney were advised that the scope of the hearing would include whether Bell was involved in the accident, whether he had complied with the provisions of the applicable law, and whether he came within any of the provisions of the

law. They were also notified that an appeal could be taken from the Department's ultimate decision (A. 11). Due to the nature and purpose of the hearing, the claimants were not notified by the Department since it would not affect them. The hearing resulted in the decision that nothing was presented by Bell which would avoid the earlier order of suspension. That is, he did not show proof of liability insurance, or a general or conditional release from the claimants, or self-insurance, or that his vehicle was legally parked at the time or was being used without his permission, or that he had posted one of the types of acceptable security. Nor did he show that the amount claimed was excessive. (The amount required, $5,000, included $1,057.50 as costs incurred to the date the physicians signed their statement in March 1969.) However, Bell was given an additional thirty days in which to meet one of the alternatives offered or to undergo suspension (A. 12).

Appeal to the Superior Court of Cook County was filed on Bell's behalf, and the matter was set down and heard in May, before the date scheduled for suspension (A. 14). Despite the fact that neither claimants nor the injured child were parties to the action, and despite the fact that they were not present as witnesses or otherwise, the court made a finding that Bell was not at fault in the accident. So finding, the court ordered that suspension not occur until the filing of a suit against Bell, and in that event only if he did not then comply with the financial responsibility laws (A. 15). The record does not reflect that a due process argument was ever raised or considered by the court in making its determination. Bell apparently simply convinced the court, *ex parte*, that he was not at fault, and the court determined that

suspension should not occur unless and until suit was filed, despite noncompliance with the safety responsibility requirements.

The decision was appealed by the Department to the Court of Appeals of Georgia (A. 19), and since the proceeding before the Superior Court was not recorded, the Department and Bell entered into a stipulation in lieu of a transcript (A. 16-18). This method of preserving the record is provided in Ga. Laws 1965, pp. 18, 26 (Ga. Code Ann. § 6-805[g]). The stipulation set out, among other things, that the court made a finding of freedom from fault and that the Department argued the decisions of three Georgia cases which held that the financial responsibility requirements as set out, had to be met before licenses could be restored. One of the three cases specifically approved the Department's refusal, in administering the safety responsibility law, to consider evidence of who was responsible for the accident. *Turmon v. Department of Public Safety*, 222 Ga. 843, 152 S.E.2d 884 (1967).

The suspension did not, therefore, become effective, and Bell has not experienced any suspension to date. Neither has he complied with the requirements in any manner so as to avoid suspension, and he has not obtained a release from claimants nor evidenced any attempt to do so though he steadfastly maintains he is not at fault. The one year period for proof of financial responsibility has now expired, so Bell would not be required to file such proof, even if the Court of Appeals decision were affirmed. On the other hand, the three-year suspension which was to begin on June 10, 1969, will not expire until June 10, 1972, so that Bell could still be subject to it if the Court of Appeals decision is af-

firmed. The three-year period required by law, which since Bell's order of suspension has been reduced by amendment to one year, is not meaningless as Bell would have the Court believe. Although actions for injuries to the person shall be brought within two years after the right of action accrues, Code of Georgia of 1933, Section 3-1004, as amended, Ga. Laws 1964, p. 763, and a father may recover for torts committed to his child, Code of Georgia of 1933, Section 105-107, the statute is tolled for infants until after the disability of infancy is removed, Code of Georgia of 1933, Section 3-801. This provision is specifically made applicable to actions for torts. Code of Georgia of 1933, Section 3-1005.

The appeal, based on three claimed errors of the trial court, (A. 20), was filed in the Georgia Court of Appeals rather than in the Supreme Court of Georgia. The latter court has jurisdiction "in all cases that involve the construction of the Constitution of the State of Georgia or of the United States, . . .; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question; . . ." Constitution of the State of Georgia of 1945, Art. VI, Sec. II, Par. IV (Ga. Code Ann. § 2-3704). Jurisdiction was retained by the Court of Appeals, evidencing the fact that the case did not draw into issue the Fourteenth Amendment due-process question here advanced. It was argued by Bell, in his state-court brief, that the due process clause required the hearing to include the question of fault and liability. Such a posture does not raise the question in the record, as the briefs are not part of the record. *Rawls Bros. Co. v. Paul,* 115 Ga. App. 731, 155 S.E.2d 819 (1967); *Windsor v. Southeastern Adjustor,* 221 Ga.

329, 144 S.E.2d 739 (1965). The proper raising of constitutional questions is discussed in Respondent's Memorandum on Posture of Federal Question, filed in this Court on November 26, 1970. Nor did Bell ask that the case be transferred to the Supreme Court of Georgia because of a constitutional question.

The Court of Appeals reversed the judgment of the Superior Court on March 4, 1970 (A. 23-25), *Burson v. Bell,* 121 Ga. App. 418, 174 S.E.2d 235 (1970). It held that suspension was required by the facts, and that fault or innocence is an irrelevant factor. Only compliance with the financial responsibility law would warrant reinstatement. Further, delaying suspension until a damage suit is instituted is contrary to law. The Court apparently did not accept the argument that due process was denied if fault were not considered, nor did it regard the argument as requiring transfer of the question to the Georgia Supreme Court. Motion for rehearing was denied (A. 26), and a writ of certiorari requested of the Supreme Court of Georgia was also denied (A.27). Remittitur to the superior court was stayed on May 26, 1970, by the Court of Appeals, pending application to the Supreme Court of the United States for writ of certiorari.

SUMMARY OF ARGUMENT

The purposes of the Motor Vehicle Responsibility Law, portions of which are here attacked as a denial of due process guaranteed by the Fourteenth Amendment, are relevant to a consideration of the charge made and indicate the broad and legitimate general welfare intent of the legislation.

Georgia's concern with the type of safety and financial responsibility in motor vehicle regulation here subject,

goes back to 1945. The development and refinement of the law since that time evidences the continuing effort to make the law responsive to the needs of the public in a burgeoning, motor-vehicle-geared community. The rights of the individual motorist are protected and have not, by virtue of the requirements of the law attacked, been sacrificed. The aspect of the procedure complained of, when viewed in terms of the total procedure and in the light of the objective sought to be achieved, is not a deprivation of constitutionally-protected due process. It is rather a reasonable means utilized in the exercise of the State's police power.

As respects Petitioner, the application of the motor vehicle responsibility law did not violate his rights. He was afforded an agency hearing at which the relevant facts were found and the proper conclusion reached, that is, that he was subject to the provisions of the Act, which had placed a condition on the use of his licenses. He also was afforded judicial review before the date of suspension had arrived. The almost universal state vehicle responsibility statutes have withstood the test of constitutional attack in both state and federal courts over a long period of years. Some states require compulsory insurance as a condition of licensing. Others require payment for accidents only after judgments have been rendered, with suspension as an alternative. Georgia has selected a moderate ground after years of trial, as the opportunity to own and operate a motor vehicle on the public highway without financial responsibility is given to those who choose to bear the risk of involvement in an accident. Such leniency does not become a lack of due process when a motorist is required to prove he is financially responsible.

ARGUMENT

A. PURPOSE OF THE LAW CONCERNING WHICH PORTIONS ARE ATTACKED AS A DENIAL OF FOURTEENTH AMENDMENT DUE PROCESS GUARANTEES.

The law which Petitioner attacks is not new nor untried in Georgia. In 1945, the "Motor Vehicle Safety Responsibility Act" was passed. As included in the official title of the Act, it was an Act:

> "To empower the Director of Public Safety to cancel driver's licenses under certain conditions; to provide for reinstatement of such licenses upon proper showing; to provide for appeals; to provide penalties for violations of this Act; to repeal conflicting law; and for other purposes." Ga. L. 1964, pp. 276-278.

In Georgia, the title of an Act is particularly important because the Constitution provides that:

> "No law shall pass which refers to more than one subject matter, or contains matter different from what is expressed in the title thereof." Constitution of the State of Georgia of 1945, Art. III, Sec. VII, Par. VIII (Ga. Code Ann. § 2-1908).

Unity of purpose is what this constitutional provision requires of legislative enactments. *Williamson v. Housing Authority of Augusta,* 186 Ga. 673, 679, 199 S.E. 43 (1938). The object is to protect the people against covert or surprise legislation. *Bray v. City of East Point,* 203 Ga. 315, 317, 46 S.E.2d 257 (1948). Thus it has been held on numerous occasions that the title is to indicate the general object of the Act and the subject matter to be dealt with. *Williamson v. Housing Authority of Augusta, supra; Cady v. Jardine,* 185 Ga. 9, 193 S.E. 869 (1937).

This requirement is embedded in all of the acts here involved, and attention to their titles reveals the object of each act. So, for example, the 1945 Act generally involved the cancellation and reinstatement of driver's license under certain conditions.

That law was repealed in 1951, and in its place "an Act to provide for the giving of security by owners and operators of motor vehicles" was adopted. Ga. Laws 1951, p. 565. In 1956, the 1951 Act was amended substantially, but as its title shows, one of the objects of amendment was ". . . to strike the title in its entirety and insert in lieu thereof a new title specifying the purposes of said Act." The purposes were set out at the beginning:

> "An Act to eliminate the reckless and irresponsible driver of motor vehicles from the highways of the State of Georgia." Ga Laws 1956, pp. 543-545.

That expressed statement of purpose has not been changed since, despite a number of amendments to the underlying 1951 Act.

The references to the Act in later amendments, including the last one, clearly indicate the frame of coverage and applicability which the legislature intended. So, in 1957 the title of the amending Act commenced:

> "An Act to amend an Act providing for the procedure under certain circumstances involving motor vehicle accidents for giving security by the owners and operators of motor vehicles and for the suspension and revocation of licenses and registration privileges. . . ." Ga. Laws 1957, pp. 124-125.

The 1958 General Assembly referred to "an Act providing for the giving of security by owners and operators of motor vehicles, . . ." Ga. Laws 1958, p. 694. Thereafter, this general description of the basic 1951 Act was used

in the title of the amendatory acts, to designate in compliance with the Georgia Constitution what the object of the act was. See Ga. Laws 1959, p. 341; Ga. Laws 1964, p. 225; Ga. Laws 1965, p. 456; Ga. Laws 1967, p. 775; Ga. Laws 1968, p. 430; Ga. Laws 1969, p. 819. The latter two amendments added the word "certain", describing the parent Act as one "providing for the giving of security by owners and operators of certain motor vehicles." This acknowledges the exemptions or exceptions provided.

Thus, it is abundantly clear from a study of the substantive titles relating to the law now partially challenged, that the legislature intended that every owner and operator of a motor vehicle be required to give security for accidents, unless he were excepted by obtaining liability insurance or by non-involvement in collisions resulting in injures or property damages claimed.

The broad coverage demonstrates the General Assembly's concern with the necessity to impose responsibility upon those who cause motor vehicles to traverse the highways. The responsibility was twofold and interlocking. As stated in 1956, the purpose was "to eliminate the reckless and irresponsible driver of motor vehicles from the highways from the State of Georgia." Not only was the legislature concerned with taking off the roads those who drove recklessly, disregarding the rights and safety of others, but also those who were irresponsible financially. It becomes evident, from an examination of the Act and its amendments, that the State imposition of financial requirements was intended both to advance public safety by reaching those who were judgment proof and therefore probably less careful and in reaching also those who, judgment proof or not, would fail or refuse to meet the

financial obligations arising from accidents. The general welfare of the public using the highways, by way of protection from uncompensated injury or damage, prompted the legislation and kept it in force, as did also the desire to concretely encourage careful driving.

The evolvement of the substantive provisions of the law bears witness to the continuing concern of the State with fostering safety through greater care and universal financial responsibility to the public by motorists. The State has attempted to provide or suggest a number of options to the motorist. He may select whichever alternative best suits him with respect to financial responsibility, but the State has precluded total unpenalized avoidance of this responsibility. The threat of license suspension, which is the "last straw" alternative, faces the uninsured driver who would tend to drive less carefully because he knows he is judgment-proof and therefore has little to lose in the event of an accident. It also looms as a threat to uninsured motorists who refuse to give evidence that they are ready, willing, and able to accept financial responsibility when they or their vehicles are involved in accidents.

The law imposes a condition on the licenses, and this condition is as much a part of a driver's license, registration and plates as are the requirements to abide by the traffic laws or the implied-consent law or the inspection laws. In this case, however, the condition upon which continued use of a driver's license, registration certificate, and plates depends, is the acceptance of responsibility. An applicant has the option of obtaining liability insurance when he receives his driver's license or registration and tags, or he may wait to give evidence of his financial responsibility until the event of an accident in which he

is involved. For persons who are never so involved, of course, the State's objective of accident-free highways is achieved and they need not prove their acceptance of responsibility. If no one is ever injured or damaged as a result of their operating or owning a motor vehicle, the State is not concerned with their assuming financial responsibility, although, of course, the State seeks to control any reckless driving on their part by other means. Instead of imposing financial responsibility for their recklessness, the State imposes speeding and other motoring prohibitions and inspection laws so as to discourage unsafe driving even when no one else is involved. The financial responsibility aspect of motor vehicle regulation, however, is geared specifically to protecting members of the public from the greater proneness of the financially irresponsible to reckless driving, by requiring evidence of financial responsibility when an accident has occurred, and by removing from the roads, at least for a period of time, those persons who refuse or fail to offer proof of financial responsibility for the present and for a specified period in the future.

The condition on licensing is not so strict in Georgia that a licensee must demonstrate his financial responsibility by a purchased policy of liability insurance. The condition imposes only a delayed requirement, which may never rise in the life of a licensee. The requirement that he show proof of present and future financial responsibility is triggered only by a licensee's involvement in an accident. Whether he is to blame is not the point. The State is justly concerned with his ability and willingness to pay for injuries and damages which have now occurred and which may occur in the future. Consequently, the State simply defers requiring proof until the occurrence

of a particular event, and that event is the licensee's involvement in a damage-resulting collision. By delaying activation of the requirement, the State avoids a system of compulsory-liability insurance at the outset, which otherwise might be its obligation in view of the vast number of automobiles traveling on the highways and the great incidence of collision among them. Georgia has thus been lenient in requiring proof of financial responsibility. It has acted in a restrained manner, forestalling the requirement for evidence until and unless an accident occurs.

The selection of this triggering event was not arbitrary and is not unrelated to the legitimate State purpose attempted. It is reasonable to expect, when an accident occurs and personal and/or property damage result, that someone is legally liable. Common knowledge shows, however, that oftener than not, both parties contributed some fault to the happening. This has been grappled with legally by such doctrines as "last clear chance," "contributory negligence," "comparative negligence," and so on. Georgia treats the matter thusly in its tort law:

> "If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way contribute to the injuries sustained." Code of Georgia of 1933, § 105-603.

As to the care required of a child, Georgia tort law provides:

> "Due care in a child of tender years is such care as its capacity, mental and physical, fits it for exercising in the actual circumstances of the occasion and

> situation under investigation." Code of Georgia of 1933, § 105-205.

It is further provided in Code of Georgia of 1933, § 105-205:

> "In a suit by an infant, the fault of the parent or of custodians selected by the parents, is not imputable to the child."

In *Kennedy v. Banks*, 119 Ga. App. 831, 169 S.E.2d 180 (1969), an action for the wrongful death of a seven-year-old, the Court held no error in certain instructions to the jury, viewed in the light of the whole charge:

> "(1) 'One would not be justified in assuming that a child would exercise the same degree of care for his safety as an adult under the circumstances' (2) 'Nor is one justified in presuming that a child near the highway will remain in a place of safety.' Immediately following these excerpts, the court continued, 'I further charge you that motorists owe very young children a greater duty than they owe to normal adults. The question of whether the defendant used the legally required care, the degree of legally required care under law of the facts and circumstances in this case is a question for you, the jury, to determine, and the court makes no intimations whatsoever in this regard.' Elsewhere in his charge, the court clearly instructed the jury that the defendant driver was required to be in the exercise of ordinary care under all the circumstances disclosed by the evidence." *Id.* at 831-832.

The injured child in the instant case was five years old and was riding a bicycle at the time of the accident. The intricacies of facts, circumstances, relative degrees of care, etc. in this case illustrate graphically the wisdom of the legislature in choosing involvement itself as the event which activates the requirement for proof of finan-

cial responsibility, leaving legal liability to judicial determination.

B. HISTORY OF GEORGIA'S MOTOR VEHICLE RESPONSIBILITY LAW.

The history of the law illustrates that several cut-off points and variations have been tried and discarded in favor of the one controlling presently and at the time Petitioner and the young child collided.

The 1945 Act authorized the Public Safety Director to suspend the driver's license of a person failing to pay a judgment in a case arising out of the operation of a motor vehicle, within thirty days after the judgment became final. The suspension continued until the licensee obtained liability insurance for the future or satisfied the judgment or entered an agreement by which the injured party released the liable party from compliance with the Act, or seven years elapsed. Ga. Laws 1945, pp. 276-278.

The 1945 Act was repealed in 1951, and the statute now in force, as amended, was enacted. Ga. Laws 1951, pp. 565-578. Upon the receipt of the report of accident, a licensee was required to post security, the amount of which was determined by the Director to satisfy any judgments "as may be recovered". He need not post security if there was insurance, or a bond, or a release or final adjudication of non-liability or agreement to pay, or self-insurance, or no injury or damage, or the vehicle was legally parked, or as to the owner, the vehicle was operated without permission. Where security was required, failure to post the same resulted in suspension of driver's license and registration certificate and plates. The suspension would continue until the security was

posted, or no action was instituted for one year, or a release from liability or adjudication of non-liability or written agreement for payment in installments was presented. Thus, the general public was protected from uncompensated injuries by virtue of the inducement to show good faith and ability to pay in case licensee were deemed legally culpable. The general public was also protected from future accidents involving the uninsured motorist, by the State's efforts to pursuade him to obtain insurance and by the State's removal of him from the roads for a period of time after he failed to show financial responsibility.

The Act also provided for a three-year revocation upon the conviction of certain driving offenses, but allowed reinstatement after thirty days if financial responsibility for the future were shown and maintained for three years.

In 1956, the general purpose of the Act was enunciated in the title. Ga Laws 1956, pp 543-562, *supra*. Suspension was to occur unless or until security was posted "sufficient in the judgment of the Director" to satisfy any judgments "as may be recovered; provided that the Director shall dispense with the foregoing requirements on the part of any operator or owner who is undisputedly free from any liability." Section 9. Added at this time were two more alternatives to posting cash security; a surety-company bond and a real-property bond became acceptable. Section 11. Suspension was also authorized if a final judgment was not paid in thirty days. This latter addition revived the suspension provisions for unpaid judgments, which had been the only circumstance under which suspension would occur by virtue of the 1945 Act. Proof of future financial responsibility became required not only in the case of convictions, but also where pleas

of guilty or forfeiture of bond was made. A significant addition permitted the Director to increase the amount of security, where previously he had only been authorized to reduce it.

In 1957 and 1958, the limits of liability or security were increased. Ga. Laws 1957, pp. 124-129; Ga. Laws 1958, pp. 694-697. An amendment in 1959 did not affect the provisions here attacked. Ga. Laws 1959, pp. 341-342.

In 1963, in lieu of the provision that the Director should dispense with the security requirements on the part of any operator or owner who is undisputably free from any liability, a minimum amount was set, and in addition to security, the licensee was to give and maintain proof of future financial responsibility. Thus the requirement for future proof was extended to all those who became obligated to post security. The duration of future proof of financial responsibility was set at three years, and the period for holding security was increased from one year to two years. Ga. Laws 1963, pp. 593-601.

The 1964 Act changed the minimum amount of security from $500 to an amount not less than the claimed amount of damages for personal and property injury sworn to in the report or notice of the accident by the aggrieved party. The effect was that the Director could not require a lower amount than the amount claimed, and on the other hand he was not held to $500 if the amount claimed was less than that. The duration of proof of future financial responsibility was decreased from three years to one year. Ga. Laws 1964, pp. 225-232.

The acts of 1965 and 1967 made changes that are not

pertinent to the current discussion. Ga. Laws 1965, pp. 456-458; Ga. Laws 1967, pp. 775-776.

In 1968, there was established a violation point system for assessment of points for all the various moving traffic violations committed in Georgia by Georgia drivers. Ga. Laws 1968, pp. 430-434. This Act tied in to those provisions of the responsibility law which dealt with reinstatement after thirty days from revocation for conviction, guilty plea, or bond forfeiture, if the licensee qualified as a self-insurer or filed proof of liability insurance.

The 1969 Act decreased the duration of suspension except under certain circumstances from three years to one year. Ga. Laws 1969, pp. 819-824.

C. THE OPERATION OF THE MOTOR VEHICLE RESPONSIBILITY LAW AT PRESENT AND AS AFFECTING PETITIONER.

The law to date, and in effect at the time of the accident here subject, requires a report to be filed by every operator involved in an accident resulting in injury or damage to an extent of $100 or more. If, in addition to the report, property damage and personal injury is claimed by the substantiated affidavit of a party, the law requires filing proof of financial responsibility. This may take the form of existing liability insurance or bond, cash security in the amount claimed, surety company bond or real property bond in the amount claimed, or certificate of self-insurance if person has ten or more vehicles registered in his name. Proof of financial responsibility for a one-year period in the future is also required. (The period prescribed was three years when imposed on Petitioner). Section 5 (Ga. Code Ann. § 92A-605).

Security and proof of future financial responsibility is not required if the licensee has liability insurance or bond in effect at the time of the accident, or the person is a self-insurer and the requirements do not obtain if no injury or damage was caused to the person or property of another, or none are claimed, or the vehicle was legally parked at the time of the accident, or as to the owner, the vehicle was being operated without permission.

The claim which puts in motion the applicability of the law is a claim which is filed with the Department of Public Safety against the motorist, for personal injury and/or property damage. It must be made under oath and state that the claimant believes himself entitled to recovery of the stated amount from the motorist and that said motorist has not been released nor has any judgment been rendered against the claimant as a result of the accident (Form SR-57, A.6). The statement must also describe the family and employment status of the injured party and include a statement describing the injuries and other facts relevant to the injuries by the attending physician (A.7). The security required cannot exceed $10,000 for bodily injury to or death of one person in any one accident, or $20,000 for bodily injury to or death of two or more persons in any one accident, or $5,000 for damage to property in any one accident. This is in conformity with the uninsured motorist provisions of motor vehicle liability policies as required in Georgia. Ga. Laws 1963, p. 588, as amended 1964, p. 306; 1967, pp. 463, 464; 1968, pp. 1089, 1091; 1968, pp. 1415, 1416 (Ga. Code Ann. § 56-407-1). Subsection (d) provides:

> "A motor vehicle shall not be deemed to be an uninsured motor vehicle within the meaning of this

> section when the owner or operator of such motor vehicle has deposited security, pursuant to the provisions of Section 9 of an Act providing for the giving of security by owners and operators of motor vehicles [Chapter 92A-6] in the amount of $10,000 where only one person was injured or killed, $20,000 where more than one, or $5,000 for property damage."

The two provisions go hand in hand; the security required cannot exceed the minimum insurance designated by the State.

It is pertinent to note that the amount claimed may be increased or reduced by the Director. Although the amount is not to be reduced below the amount claimed, this has been construed to mean an amount substantiated in the Director's judgment. So in Bell's case, the initial claim was for $10,000 or more," but security was required in the amount of $5,000. (A. 6, 7, 9). Also, since the Director may require the reporter of the accident to file additional relevant information over and above what is asked for in the report form, a fraudulent claim could be revealed if challenged by the uninsured motorist.

Thus, security and proof of future financial responsibility is only required when the motorist is involved in an accident in which injury or property damage or both occurred, and the aggrieved person files a claim stating he believes he is entitled to recovery against the motorist verified, and no release from liability is filed or settlement accomplished, and the vehicle was not legally parked at the time of the accident, and the motorist is not a self-insurer or possessed of other covering insurance policy or bond. This, it is submitted, constitutes the "reasonable possibility of judgment", which Petitioner alleges he

should be assured of before he is required to post security.

Before suspension occurs, ten days' notice is given to the motorist so that he has an opportunity to post security and future proof of financial responsibility. Section 5(b) (Ga. Code Ann. § 92A-605[b]). He also has an opportunity for a hearing on whether he must post security and proof, and in Petitioner's case, the hearing was held before the suspension became effective. Appeal may be taken to the superior court for a *de novo* hearing, with or without jury. The issues are whether the applicant or his vehicle were involved in the accident; whether he complied with the provisions of the law; or whether he comes within any of the exceptions of the law; whether the amount of damages is excessive would also be pertinent. If the motorist fails to post security and proof of future financial responsibility, his licenses will be suspended, but only until he files security and proof of financial responsibility for the future or one year elapses and no action has been instituted, or until a release from liability, final adjudication of non-liability, or duly acknowledged written agreement for payment in installments is filed. Thus, the option to meet the requirements is continually left open for the uninsured motorist. Section 7 (Ga. Code Ann. § 92A-607). If a suit is pending, the suspension continues until judgment is paid or the motorist is adjudicated non-liable. Section 5(f) (Ga. Code Ann. § 92A-605[f]). If, of course, a judgment is obtained against an uninsured motorist who refuses to post security, non-payment after thirty days of at least a certain portion of the judgment continues the suspension or instigates it if it has not commenced previously. Section 5(e) (Ga. Code Ann. § 92A-605[e]).

In the event the motorist does post security in some

form and no action is commenced within two years after the date of deposit, it is returned. Section 10 (Ga. Code Ann. § 92A-610). It can, of course, be returned earlier if a release or final adjudication of non-liability or installment agreement is evidenced to the Director.

Suspension also may occur upon conviction or plea of guilty or forfeiture of bond with respect to certain motor vehicle offenses. Section 7-A (Ga. Code Ann. § 92A-608). The one year period may be shortened to approximately one month if the operator qualifies as a self-insurer, obtains liability insurance, or surety bond or other proof of financial responsibility. The duration of future proof of financial responsibility is one year, but on the second occasion on which a person is required to file such proof, it must be maintained for a three-year period. Section 15 (Ga. Code Ann. § 92A-615.1).

It is evident from an examination of the entire Act, as amended, that its purpose is to induce persons to secure the compensation of the public for accidents for which the motorist is responsible. This is accomplished by requiring him to show proof of financial responsibility when he is involved in an accident. To wait until a judgment is rendered may well render the act useless, for a motorist who is not financially responsible would then be in no worse position than any other judgment debtor except that he would lose his driving privileges if he failed to pay. This would be of little assistance to the members of the public injured or damaged, who would not be compensated despite pursuance of their claims through the judicial processes of suit. That Georgia's method has proved more effective is evidenced by the trial and discarding of other methods, as shown by the history of the Act.

D. THE MOTOR VEHICLE RESPONSIBILITY LAW IS A LEGITIMATE EXERCISE OF THE STATE POLICE POWER.

The statute, portions of which are here being attacked, is an effort by the State to regulate the movement of motor vehicles upon its highways. The driver's license is required for operating a motor vehicle upon the public roads or highways in the State. Ga. Laws 1937, pp. 322, 341, as amended (Ga. Code Ann. § 92A-9901). To obtain a license, a test demonstrating fitness and knowledge of motor vehicle regulations must be passed. *Ibid* (Ga. Code Ann. § 92A-401). The purpose of the provision for registering vehicles and obtaining license plates is stated as "being the better and more complete enforcement of the motor vehicle law, . . ." Code of Georgia of 1933, § 68-201, as amended (Ga. Code Ann. § 68-201). This section, then, affords a system of identification and proof of ownership. Georgia regards licenses thusly:

> "Where, in the exercise of the police power, a license is issued, the same is not a contract but only a permission to enjoy the privilege for the time specified, on the terms stated. It may be abrogated." Code of Georgia of 1933, § 20-117 (Ga. Code Ann. § 20-117).

This Court long ago had occasion to examine the nature of such motor-vehicle regulation in *Hendrick v. Maryland,* 235 U.S. 610 (1915). Recognizing even at that early date both the danger and cost to the public which attends the movement of motor vehicles over the highways, the Court said:

> "In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order and respect to the operation upon its highways of all motor vehicles,—those moving in interstate commerce as well as others. . . . This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens; . . . ." 235 U.S. at 622.

The power of the state to regulate the use of motor vehicles including reasonable provisions to insure safety was also commented on in *Kane v. New Jersey*, 242 U.S. 160 (1916).

Not only may the state regulate usage of its highways by making licensing a prerequisite, but in further regulation, the license "may be abrogated". Code of Georgia of 1933, § 20-117, *supra*. This is done not only by requiring periodic renewal of the various licenses, but also by subjecting continued use of the license to obedience to the traffic laws, to the inspection laws, and to the implied-consent law, as well as to the safety responsibility law here subject. Safety, of course, is one of the objects of such legislation. As stated in *Hess v. Pawloski*, 274 U.S. 352 (1927):

> "Motor vehicles are dangerous machines; and, even when skilfully and carefully operated, their use is attended by serious danger to persons and property. In the public interest the state may make and enforce regulation reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways." 274 U.S. at 356.

Safety is not only the object which may validly be pro-

moted by the exercise of a state's police power, however. The state may also, in the exercise of the police power, exact a tax for the privilege for using its highways. *Bode v. Barrett,* 344 U.S. 583 (1953). But a state's police power is even broader. A state has the power and is under a duty to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents. *Thornhill v. Alabama,* 310 U.S. 88 (1945). Or as recognized more recently in *City of El Paso v. Simmons,* 379 U.S. 497, *reh. den.* 380 U.S. 926 (1965), the state legislature has wide discretion in determining what is and what is not necessary in the exercise of the police power to protect the general welfare. It is an exercise of the sovereign rights of government to protect the general welfare of the people. *East New York Savings Banks v. Hahn,* 326 U.S. 230 (1945).

Of course, police power is not an unrestricted grant to the states. It connotes a limitation of public encroachment on private interests. *Goldblatt v. Town of Hempstead, New York,* 369 U.S. 590 (1962). It is subject to specific constitutional limitations, but as was described in *Berman v. Parker,* 348 U.S. 26 (1954), when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. Each case involving the constitutionality of an exercise of the police power by a state must turn on its own facts. *Berman v. Parker, supra.*

In the instant situation, the State is attempting to balance the interests of citizens who responsibly retain insurance which pays those injured and of citizens who are injured or damaged on the highways, with the

interest of those who would rather take the risk of accident and not pay for insurance.

Requiring insurance as a condition of licensing would be a proper exercise of the police power. In *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1932), a state statute requiring private motor carriers to obtain a license, pay a tax and file a liability insurance policy, was upheld. The Court recognized that:

> "The insurance policy is to protect the interests of the public by securing compensation of injuries to persons and property from negligent operations of the carriers. . . . Requirements of this sort are clearly within the authority of the State which may demand compensation for the special facilities it has provided and (reasonably) regulate the use of its highways to promote the public safety." 286 US. at 365.

This case was cited in *Ex parte Poresky*, 290 U.S. 30 (1933), to substantiate the proposition that the question of whether a state statute requiring compulsory automobile insurance violated the Fourteenth Amendment, was no longer open to debate. The judgment of the lower court, ruling that a three-judge court was not required because the question was not substantial, was affirmed by this Court,

> "In view of the decisions of this Court bearing upon the constitutional authority of the State, acting in the interest of public safety, to enact the statute assailed." 290 U.S. at 32.

Thus, requiring liability insurance as a condition of licensing was found not violative of the due process clause of the United States Constitution. The proposi-

tion was repeated in *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962), overruled only with respect to a three-judge doctrine contained therein, *Swift and Co. v. Wickham*, 382 U.S. 111 (1965).

Requiring insurance as a condition of licensing is at one end of the scale of the financial responsibility schemes. Requiring only payment of judgments actually rendered for damages caused by the licensee, in order to avoid suspension, is at the other end of the scale. This Court upheld the latter method against a challenge that it violated Fourteenth Amendment due process, in *Reitz v. Mealey*, 314 U.S. 33 (1941). There the Court said:

> "Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some states require insurance or the equivalent as the condition of issuance of a license. New York chose to obtain the same end by providing for the revocation or suspension of a license of the holder who is adjudged guilty of negligent driving." 314 U.S. at 36.

Georgia has chosen a middle ground, after experimenting with suspension only after judgment. As has been shown, the Georgia law provides that the event triggering requirement for proof of financial responsibility is involvement in an accident in which someone makes a claim for damages. Only then need the Georgia motorist show he is responsible for injury or property damage which may have been or may be caused by him. It is a delayed condition, designed not to prevent persons from obtaining licenses, but only to warn them that they must bear the risk of responsibility for their actions. That

it is a condition is not subject to debate. As the Georgia Supreme Court clearly stated in *Turmon v. Department of Public Safety*, supra:

> ". . . No one is privileged to operate a motor vehicle upon the public roads without complying with the conditions prescribed by law. It is too late to protect the innocent victims of wrecks caused by such operators after the injury has been done and the licensee is wholly unprepared to pay damages caused by him. The 1951 Act points the way to get so prepared. And it attaches the penalty of withdrawing the license when the licensee is not prepared and is involved in a wreck. The law is wise, just and valid, and the Department of Public Safety deserves full support in its enforcement." 222 Ga. at 844.

Thus, the obligation to accept financial responsibility towards others on the highway actually arises upon licensing, but the proof of the acceptance of such an obligation is delayed until the happening of an event related to the need for the imposition of such an obligation. Georgia's law was upheld against the same attack made here, in two cases decided by three-judge courts: *Roberts v. Burson*, ... F.Supp. ..... No. 12588 (Northern District of Georgia, 1969), and *Chappell v. Department of Public Safety*, ... F.Supp. ..... (Northern District of Georgia, 1970), appeal docketed, United States Supreme Court, No. 6171, October Term, 1970.[1]

Petitioner complains that the Georgia statute does not serve a legitimate State interest because it results

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[1]Opinions appear as Appendices "D" and "E" of Respondent's Brief in Opposition to the Petition for Writ of Certiorari.

only in helping potential private creditors to collect debts owed. This is entirely too narrow an analysis of the broad reach of the Act. Not only does it require uninsured motorists involved in an accident wherein a claim is filed, to post security in the event another user of the highway is entitled to compensation for a past accident, but it requires the uninsured to exhibit proof of financial responsibility in the future. Thus, the members of the general public are protected from uncompensated damages. Also, by removing from the highways, at least for a limited period of time, those persons who fail to show proof of financial responsibility, the State conclusively prevents the occurrence of some uncompensable injuries and damages.

The limited view which Petitioner takes of the statute's effect was not shared by the Georgia General Assembly in stating the purposes of the Act, nor did the Georgia Supreme Court find its purpose so small. The latter recognized, following an examination of the Act in *Murphy v. Dominy*, 211 Ga. 70, 73, 84 S.E.2d 193 (1954):

> ". . . The Motor Vehicle Responsibility Law has for its purpose requiring the qualification of the licensee as a self-insurer, or the giving of a liability policy, or a surety bond, for the protection of the public from any loss or damage during a period of three years . . . (I)t deals with the revocation of a privilege, . . ." 211 Ga. at 73.

The requirements also apply to those convicted of certain moving violations. Section 7-A (Ga. Code Ann. § 92A-608).

The connection between financial responsibility and safe driving was also apparent to this Court. Following a long documentation of the history of the state safety responsibility laws, in which the distinctions between them was described and the development of various types of such laws was reviewed, the Court commented that:

> "A State may properly decide, as 45 have done, that the prospect of a judgment that must be paid in order to regain driving privileges serves a substantial deterent to unsafe driving. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 173.

Cognizance of the rationality of this proposition extends also to Georgia's efforts to curtail reckless and irresponsible driving by requiring security and financial responsibility after an accident in which claims are made. The potential judgment debtor, having been in an accident, is no less immune from a desire to avoid suspension and repeated experiences of the same than is the debtor who already has a judgment against him. It is notable that the Court recognized in its study that Georgia's law required security after accidents and proof after certain violations. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 165, n.29. Also, in referring to the statute discussed in *Reitz v. Mealey, supra,* which statute provided that suspension should not occur until there was an unsatisfied judgment, the Court regarded it as one not designed to aid the collection of debts but to enforce a policy against irresponsible driving. *Kesler v. Department of Public Safety, supra,* 369 U.S. at 169. Thus, Bell's argument, that the only purpose is to assist private creditors and that this is impermissible, does not bear up under scrutiny.

Moreover, the result he finds objectionable would certainly constitute one of the results were Georgia to have compulsory insurance, and yet he finds no constitutional limitations on such a scheme.

E. REQUIRING FINANCIAL RESPONSIBILITY PROOF AFTER ACCIDENT INVOLVEMENT DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS.

Whether the licenses here involved are regarded as property or limitations on liberty or rights or privileges, they are not absolute and, as has been shown, the State may reasonably regulate the use of them. The question as to due process is not whether it is a right or privilege or liberty. Georgia itself recognizes that the right to drive a motor vehicle and the right to obtain a license to do so is a "civil right." *Nelson v. State,* 87 Ga. App. 644, 75 S.E.2d 39 (1953). But as correctly noted in *Nelson,* the right is regulated by legislation, and every person is entitled to it if he meets the requirements and qualifications of the law. The Fourteenth Amendment prohibits states from depriving "any person of life, liberty, or property, without due process of law." Constitution of the United States, Amendment XIV. The test to measure the validity of a state statute under the due process clause of the Fourteenth Amendment is whether the statute is contrary to fundamental principles of liberty and justice. *Re Groban,* 352 U.S. 330 (1957). Due process has to do with the denial of fundamental fairness shocking to the universal sense of justice; it deals neither with power nor jurisdiction, but with mere exercise. *Kinsella v. United States,* 361 U.S.

234 (1960). Even rights are subject to proper regulations. In the judicial application of the due process clause, a balancing of relevant and conflicting factors is a necessary process. *Bartkus v. Illinois*, 359 U.S. 121 (1959). In the context of deprivation of liberty, due process does not prohibit all inhibition of liberty. *Zemel v. Rusk*, 381 U.S. 1 (1965). Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon individual freedom in a particular context and the justification of social need on which the demand rests. *Frank v. Maryland*, 359 U.S. 360 (1959).

It is submitted first of all, that the Georgia statute regulating traffic on its highways does not abridge the right of interstate travel. The State sought to prohibit Bell from using his motor vehicle in Georgia or operating another vehicle because of his refusal to exhibit financial responsibility. This is a far cry from violating the rights of Bell as a citizen of the United States to pass into and through the State. As to such argument, the Court in *Hendrick v. Maryland, supra*, gave short shrift:

> "There is no solid foundation for the claim that the statute directly interferes with the rights of citizens of the United States to pass through the State; . . . Here the State at most attempts to regulate the operation of dangerous machines on the highways, and to charge for the use of valuable facilities." 235 U.S. at 624.

Petitioner argues that *Agee v. Kansas Highway Cmr. Motor Vehicle Department*, 198 Kan. 173, 422 P.2d 949 (1967), and other state cases are premised on the "right-privilege" distinction, and that it has been laid

to rest in *Shapiro v. Thompson*, 394 U.S. 618 (1969). But the right of citizens to travel interstate, or to travel freely intrastate for that matter, has little to do with regulating a person's operation of a dangerous vehicle on the public highways. His right to move his person where he wills is not restricted at all. His *method* of movement, that is, by his own automobile or by his operating another's automobile, is what is regulated. This is the legitimate exercise of the police power. The fact that his freedom is incidentally curtailed by the State's exercise of its police power in suspending a license does not constitute an unpermitted abridgment on his right to travel. It must be remembered that he brought the suspension upon himself. The right to travel freely, and the right to exercise the privileges of operating one's motor vehicle on the highways, should not be confused.

Secondly, the State has not attempted to suspend Bell's license without due process. A hearing on whether he complied with the requirements of the law was held prior to the suspension date, and the judicial review also preceded suspension. The alternatives were up to Bell. He could have avoided the suspension of his license. The fact that fault was not considered by the Department does not deprive Bell of due process. The finding of fault is a judicial obligation. Requiring the administrative agency to first find fault may be a violation of the constitutional prohibition against separation of powers. Constitution of the State of Georgia of 1945, Art. I, Sec. I, Par. XXIII. (Ga. Code Ann. § 2-123).

Moreover, the legislature has not seen fit to impose upon the administrative agency the complicated, costly, and time-consuming duty of establishing culpability be-

fore effecting a suspension. It deemed it best not to require the Department to interfere with a judicial function. The result does not violate Bell's constitutional rights. Petitioner argues that a finding of "potential culpability" or "reasonable possibility of a judgment" would be sufficient to meet due process requirements. Georgia's procedure, upon analysis, meets just such a criterion. The State provides that suspension may be avoided by obtaining settlement or release, as one avenue for avoidance of suspension if a licensee chooses to travel about uninsured. Thus, the fact itself that he cannot obtain a release indicates a reasonable possibility of suit against him, if not judgment. It is undisputed that Petitioner was involved in an accident, that he was not insured at the time, that there was injury or damage, that the other persons involved filed a claim against him swearing belief in entitlement to recovery, that he has not obtained a release; these all add up to "potential culpability" or "reasonable possibility of judgment." Thus, the State is not taking the motor vehicle licenses without due process. It is simply requiring its motorists to be insured or to post security and proof of future financial responsibility if they choose to remain uninsured and risk involvement in an accident. The refusal to comply with any of the alternatives afforded results in the sanction of suspension, but the opportunities to avoid suspension are numerous.

F. AFTER CAREFUL CONSIDERATION OF THE ARGUMENT OF PETITIONER BY OTHER COURTS, IT HAS BEEN REJECTED.

The general question posed to this Court has been

dealt with by other courts in both the State[2] and Federal systems. In addition to the cases dealing with Georgia's law, other similar laws have been examined from the aspect of the same question and have been found in conformity with due process requirements. In *Perez v. Tynan,* 307 F.Supp. 1235, (D. Conn. 1969), the court dealt with this issue and others and, citing numerous state courts in support of its conclusion, held that:

> "Constitutional due process is not offended, merely because a security deposit may be ordered by the commissioner without first determining fault." 307 F.Supp. at 1240.

It included in its opinion a noteworthy discussion of the Arizona cases which Petitioner asserts Georgia should be required to follow. It points out that the Arizona courts were interpreting an ambiguous statute so that they turned on legislative intent and not constitutional requirements. The court also pointed out that "the scope of the hearing in Arizona has been sharply limited. *Burri v. Campbell,* 102 Ariz. 541, 434 P.2d 627 (1967)." 307 F.Supp. at 1240-1241.

Not only did the Arizona court limit its holding to a conception of the statute, but the same approach was taken in *Orr v. Superior Court,* 77 Cal. Rptr. 816, 454 P.2d 712 (1969). The Court ruled that the statute re-

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[2]The State cases are collected in 35 A.L.R.2d 1011, 1021, § 7, and Supplemental Annotation, Later Case Service for 32-39 (1969 Ed.) p. 408, § 7. See, for example, *Gillespie v. Department of Public Safety,* 259 S.W.2d 177, 152 Tex. 459 (1953), *cert. den.* 347 U.S. 933, and cases cited therein; *Ballow v. Reeves,* 238 S.W.2d 141 (1951); *Hughes v. Department of Public Safety,* 79 So.2d 129 (La. App. 1955); *Velletri v. Lussier,* 148 A.2d 360 (R.I. 1959).

quired the Department to make a determination of "reasonable possibility of judgment" before suspension, and it explicitly refrained from determining whether a statute that did not require a determination of fault, would be unconstitutional. A like stance was taken by the New Jersey Supreme Court in *Williams v. Sills*, 55 New Jersey 178, 260 A.2d 505 (1970). It adopted the California interpretation of the statute. Chief Justice Weintraub, in a concurring opinion, recognized that the decision was not made on constitutional grounds and said, with respect to the constitutional issue of due process:

> "It is compatible with due process to require security in advance of the accident, and of course without regard to a probability of future fault. If the Legislature may thus require security in advance of the occurrence, I see no difficulty, under either the due process clause or the equal protection clause, in the circumstance that the Legislature permitted all motorists to choose to post the security before or after the happening of the event. Thus viewed, a failure to provide for an inquiry as to liability with respect to the motorist who elected to post the security after an accident is not arbitrary or invidious. To the contrary, the statute deals with an even hand with all motorists, to achieve security, in advance of a determination as to fault." *Id.* at 509-510.

The case of *Cheek v. Washington*, 311 F.Supp. 965 (D. D.C. 1970), involved the claim that the District of Columbia statute violated due process because it did not provide for a prior hearing to determine culpability before suspension. The court refused to convene a three-judge court, being of the opinion that no substantial constitutional question was involved because the intent of

the procedure, which was to insure financial protection from the public, was "reasonable *vis a vis* the end sought to be attained." 311 F.Supp. at 966. The court did not rely on the bankruptcy case of *Lee v. England,* 206 F.Supp. 957 (D. D.C. 1962), but merely cited that case for a quotation from *Kesler v. Department of Public Safety, supra.*

The three-judge court in *Gaytan v. Cassidy,* 317 F.Supp. 46 (W.D. Tex. 1970), appeal docketed, Number 495, OT 1970, reviewed a number of state and federal decisions and adopted as "the prevailing and better view" that due process was not violated. Whether one considers a license to be a privilege or a property right, the court said:

> "In either case, while the licensee is entitled to the protection of the Fourteenth Amendment, he is also subject to reasonable regulations under the police power in the interest of the public safety and welfare." 317 F.Supp. at 49.

More recently, several other three-judge courts have found that suspension without a prior determination of fault is not a deprivation of due process. In *Trujillo and Montoya v. DeBaca, Comm. of Motor Vehicles,* filed in Albuquerque on December 23, 1970, (No. 8382, Civil), the United States District Court in New Mexico rejected the argument that *Goldberg v. Kelly,* 397 U.S. 254 (1970) and *Sniadach v. Family Finance Corporation,* 395 U.S. 337 (1969), required a different result. The court was of the opinion that there was no right so basic to the necessity of life that it, without more, compels the state to provide the hearing and prior determination of fault requested. Petitioner contends that those

two Supreme Court cases, and *Shapiro v. Thompson*, 394 U.S. 618 (1969), invalidate the decision in *Llamas v. Department of Transportation, Division of Motor Vehicles*, Civil No. 68-C-154, Eastern District of Wisconsin (1969) (Appendix A). But these decisions, as the New Mexico court recognized, involve different circumstances entirely, and the due process considerations do not require the same results here.

In *Latham v. Tynan*, ... F.2d ..... No. 34668 (2nd Cir. 1970), a three-judge court reviewed the question and found that due process was not wanting. It recognized that Connecticut could have conditioned licensing only upon compliance with some compulsory insurance requirement. The adoption of a modified form of protection, i.e., the requirement for financial responsibility only after involvement in an accident, was permissible.

CONCLUSION

Georgia is concerned with the injuries and damages occurring on its highways. Last year, according to the Annual Report of the Department of Public Safety for 1970, 1,803 persons were killed, 33,866 persons were injured, and an economic loss in the amount of $369,615,000 was caused by traffic accidents. The Department began process on 18,696 accident cases in which claims were filed under the motor vehicle responsibility law here attacked.

In an effort to induce drivers to avoid accidents for which they may be liable, and to secure compensation for those injured or damaged, the motor vehicle responsibility law is in operation. It embraces both safety

responsibility and financial responsibility. It is submitted that the procedure by which the State seeks to protect the general welfare in this regard does not violate the due process protections of the Fourteenth Amendment. The grant of a license carries with it the obligation to comply with the motor vehicle laws, and it is respectfully submitted that Georgia's statutory scheme as particularly challenged here, is valid.

Respectfully submitted,

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APPENDIX A

(U. S. Dist. Court East of Wis. Filed Jan. 3, 1969 at.....o'clock.....M; Ruth W. LaFave, Clerk)

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF WISCONSIN

MARIA E. LLAMAS, individually, GEORGE GILMORE, individually, and VIRGINIA I. DUER, individually and on behalf of all others similarly situated, *Plaintiffs,* v. DEPARTMENT OF TRANSPORTATION, DIVISION OF MOTOR VEHICLES, and JAMES L. KARNS, Commissioner, *Defendants.*	Civil Action No. 68-C-154

Before DUFFY, Senior Circuit Judge, REYNOLDS and GORDON, District Judges.

DUFFY, Senior Circuit Judge. The complaint herein challenges the constitutionality of Sections 344.13 and 344.14 of the Wisconsin Statutes. The basis of the alleged invalidity is the claim that the state statutes deprive plaintiffs of due process and of equal protection of the law under the Fourteenth Amendment to the Federal Constitution. This statute is a portion of the Financial Responsibility Law of Wisconsin, although the plain-

tiffs, in their briefs, choose to designate it "The Past Security Law."

The three individuals who are plaintiffs herein have had their Wisconsin automobile drivers' licenses suspended because they were involved in accidents on Wisconsin highways. Plaintiffs claim that in each case there was no evidence in the police accident report to suggest that the accidents were caused in whole or in part by by the negligence of the plaintiff involved.

Pursuant to Section 344.13, Wisconsin Statutes, the Motor Vehicle commissioner of Wisconsin was required to determine with respect to each of the accidents "... the amount of security which is sufficient in his judgment to satisfy any judgment for damages resulting from such accident which may be recovered against each operator and owner of the vehicles involved in such accident. . . ."

Section 344.13(2) provides: "The commissioner shall determine the amount of security required to be deposited by each person on the basis of the accident reports or other information submitted." The statute also provides the determination of the amount of the security must be "without regard to the fault of the persons involved. . . ."

The statutes here involved do not apply to a motorist who is carrying automobile liability insurance at the time of the accident.

The amount of the security fixed for Maria E. Llamas was $620.00; for plaintiff George Gilmore, $3,300, and for plaintiff Virginia I. Duer, $1,765.00. There is no claim in this case that the amounts thus set were un-

reasonable or that the Motor Vehicle commissioner did other than follow the Wisconsin Statutes. However, each of the plaintiffs does claim that he or she was and is unable to provide the security and, as a result thereof, their respective operating privileges were suspended.

The claim of unconstitutionality of the statutes hereinbefore noted has been decided adversely to plaintiffs' contentions by the Supreme Court of Wisconsin in *State v. Stehlek* (1953), 262 Wis. 642, 56 N.W. 2d 514. Similar holdings have been made by state courts of last resort in practically all of the states where their safety liability statutes have been tested on constitutional grounds.[1]

We shall first consider plaintiffs' claim of failure of due process. In *Stehlek*, the Wisconsin Supreme Court cited and quoted from *Escobedo v. State of California*, 35 Cal.2d 870, 22 Pac. 2d 1: " 'Suspension of the license without prior hearing but subject to subsequent judicial review did not violate due process if reasonably justified by a compelling public interest.' " The "compelling public interest" as set forth in *Stehlek* was the practical impossibility of a hearing prior to suspension.

Under the Wisconsin statute here under attack, the commissioner requires that security be posted in an amount sufficient to cover potential damages. True, due process typically requires that a person potentially affected by government action should be granted an opportunity to be heard prior to any action being taken. However, there are many exceptions to such a requirement. There are many instances where the assets of a

[1]See 7 Am.Jur.2nd, Automobile and Highway Traffic, Sec. 138.

person may be seized prior to a determination of his liability such as in attachment and replevin proceedings.

Wisconsin does have a statutory provision for a hearing after the commissioner has acted. Section 344.03, Wisconsin Statutes, provides that any person aggrieved by any action of the commissioner pursuant to the provisions of Chapter 344 may, after ten days' notice, file a petition in the circuit court of Dane county for a review. That court is directed to summarily hear any such petition.[2]

In our view, the plaintiffs in this case were not deprived of due process of law by reason of the action of the commissioner in fixing the respective securities as hereinbefore described. We so hold.

The second question to be resolved is the claim of each of the plaintiffs that he or she, by the actions of the commissioner, was deprived of the equal protection of the laws. The statute singles out those uninsured motorists who have been involved in a collision in which damages resulted. The plaintiffs contend that this law unfairly discriminates against those uninsured drivers who are involved in an accident. Plaintiffs argue, in effect, that equal protection requires that somehow, among those who have had an accident, the negligent must be separated from the non-negligent.

Equal protection demands that the legislature estab-

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[2]However, the Wisconsin Supreme Court has interpreted this review to be very limited. The only questions open to such judicial review are the amount of the bond required or the availability of statutory exceptions; the issues of fault and potential liability for damages may not be considered. *Burke v. Commissioner*, 8 Wis.2d 620 (1959).

lish a reasonable and rational classification. *Morey v. Doud*, 354 U.S. 457, 465-66. "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose. . . ." *McLaughlin v. Florida*, 379 U.S. 184, 191.

It is obvious that those drivers who are involved in an accident are potentially liable for damages, distinguishing them from those drivers who have not been so involved. The real contention must be that the legislature has not gone far enough, that is, that the negligent must be separated from the non-negligent.

The legislature may well have considered the number of auto accidents which occur on Wisconsin highways each year and the large number of hearings that would be required to make such a determination. In many instances, such a hearing might necessarily assume the aspects of a trial on the question of negligence, and a hearing might extend over several days. The legislature had a right to consider that such hearings would not only be time-consuming, but that the cost thereof would be exceedingly large. Further, they may have thought it unwise to empower the commissioner to make such a determination without a hearing.

It is important to bear in mind that the legislature has some leeway. "The problems of government are practical ones and may justify, if they do not require, rough accomodations — illogical, it may be, and unscientific . . . what is best is not always discernible; the wisdom of any choice may be disputed or condemned." *Metropolis Theatre Co. v. Chicago*, 228 U.S. 61, 69-70. "The 'rough accomodations' made by government do not violate the Equal Protection Clause of the Fourteenth

Amendment unless the lines drawn are 'hostile or invidious' ". *Norvell v. Illinois,* 373 U.S. 420, 424. We hold that the statutes under consideration are neither hostile nor invidious.

Plaintiffs contend that the statute is invalid because the threat of suspension of driving rights has no relation to the purpose — obtaining the security. On the contrary, we think it oftentimes would be effective. Undoubtedly, the suspension of a motorist's license may result in financial damage to the motorist, but the legislature was entitled to weigh that result against the value of obtaining the security in many cases.

Plaintiffs argue the statute assumes that every uninsured motorist involved in an accident is liable for the resulting damage. This is not accurate, however. The statute assumes only that such a motorist *may* be liable.

Plaintiffs contend the requirement to post security discriminates against those who are unable to furnish such security. Ability to pay should not be confused with opportunity to pay.

We hold that the Wisconsin legislature made a reasonable classification in enacting the laws hereinbefore described, We further hold that none of the plaintiffs was thereby deprived of the equal protection of the laws.

We are not unmindful of the hardship that these statutes may have caused to the plaintiffs in this case. We approve the statement made by the Supreme Court of Michigan in *Larr v. Secretary of State,* 317 Mich. 12, 26 N.W.2d 872: "The Secretary of State has no authority to pass upon the question of negligence or freedom from negligence. He has no discretion, but is obliged to act

as the law provides. If the penalty is harsh as to innocent parties, the relief sought must come from the legislative branch of the government."

Judgment will be entered dismissing the complaint of the plaintiffs herein.

Dated this 3rd day of January, A.D., 1969.

F. RYAN DUFFY

U. S. Sr. Circuit Judge,
7th Circuit

JOHN W. REYNOLDS

U. S. District Judge,
Eastern District, Wisconsin,
7th Circuit

MYRON L. GORDON

U. S. District Judge,
Eastern District, Wisconsin,
7th Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served true and correct copies of the foregoing Brief of Respondent, by mail, by depositing the same in a United States mail box, with first class postage prepaid, addressed to each of the following, who constitute all counsel of record:

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This.....day of March, 1971. All parties required to be served have been served.

/s/ HAROLD N. HILL, JR.

HAROLD N. HILL, JR.